

NATIONAL  
IMMIGRANT  
JUSTICE CENTER

A HEARTLAND ALLIANCE PROGRAM

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MARJORIE KOVLER CENTER

*Pro Bono Roundtable:*  
Working with  
Immigrant Survivors of Torture

Morgan, Lewis & Bockius LLP

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# **Welcome!**

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Lisa Koop, Managing Attorney  
Heartland Alliance  
National Immigrant Justice Center

# About the National Immigrant Justice Center

Heartland Alliance's National Immigrant Justice Center is a Chicago-based nongovernmental organization dedicated to ensuring human rights protections and access to justice for all immigrants, refugees and asylum seekers through a unique combination of direct services, policy reform, impact litigation and public education.

NIJC serves more than 8,000 immigrants annually with the support of a professional legal staff and a network of over 1,000 *pro bono* attorneys.

# NIJC's *Pro Bono* Programs

## ➤ NIJC's *pro bono* opportunities:

- Asylum
- Special Immigrant Juvenile Status
- VAWA/U Visa
- Deferred Action for Childhood Arrivals

## ➤ NIJC's *pro bono* programs:

- Conduct in-depth case screening, assessment and acceptance
- Place cases with *pro bono* attorneys
- Provide case management, attorney support and technical assistance
- Co-counsel with *pro bono* attorneys at law firms in Illinois, Wisconsin, and Indiana.

# NIJC Asylum Statistics

- Asylum cases open today: > 200
- Asylum approval rate:
  - NIJC: 90%
  - Nationwide: ~30 % (between the court and the asylum office)
- NIJC clients who obtained protection in FY2012: >100
- Main countries of origin: Eritrea, Ethiopia, both Congos, Cameroon, and Mexico/Central America
- Main reasons NIJC clients fear persecution: political activities, gender, sexual orientation, gang resistance, or family membership.



# **Using a Medical or Mental Health Expert in an Asylum Case**

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Ashley Huebner, Supervising Attorney  
Heartland Alliance  
National Immigrant Justice Center

# Why Experts are Important

- Support client credibility
- Provide evidence of past persecution
- Provide detail beyond applicant's testimony
- Establish future harm client will suffer upon return
- Provide a frame of reference for the client's behavior

# Right/Burden to Offer Expert Evidence

- The burden is on the applicant to establish that the applicant is a refugee...INA § 208(b)(1)(B)(i)
- Where the trier of fact determines that the applicant should provide evidence which corroborates otherwise credible testimony, such evidence must be provided unless the applicant demonstrates that the applicant does not have the evidence and cannot reasonably obtain the evidence. INA § 208(b)(1)(B)(ii)
- The alien shall have reasonable opportunity...to present evidence on the alien's own behalf...INA § 240(b)(4)(B)
- All evidence relevant to the possibility of future torture shall be considered...8 C.F.R. § 1208.16(c)(3)



# The Goal of a Medical/ Mental Health Expert Affidavits

- To corroborate your client's claim through evidence of physical, mental, and emotional harm related to the persecution suffered or feared.
- Medical evaluations showing a lack of physical harm can also help corroborate a claim:
  - A woman who has not been circumcised, but fears circumcision upon return to her home country
  - A woman who was forcibly subjected to a chemical abortion that did not leave any physical evidence
- When mental health evaluations are particularly useful:
  - Clients who have little to no hard evidence
  - Clients who have difficulty remembering or testifying about the details of past harm due to the trauma they suffered

# Communicating with the Kovler Center

- Contact NIJC if you are unsure as to whether your client is also a Kovler Center client
- If your client has asserted that she is receiving services from the Kovler Center, ask your client for the name of her case worker. Contact NIJC if your client is unsure of her caseworker's contact information
- Obtain your client's permission and a signed release before contacting the Kovler Center about her asylum case

# Communicating with Experts

- Preserve your expert's objectivity
  - Attorneys should not involve experts in client meetings or legal strategy discussions
  - Communicate directly with clients and with your experts, rather than using one to liaise with the other.
  
- Make sure experts are aware of filing deadlines and filing requirements
  - original signatures,
  - curriculum vitae included
  - notarized when possible
  - See Immigration Court Practice Manual for full filing requirements

# Timing and Deadlines

- **Affirmative (Asylum Office) Applications:**
  - Asylum application (I589) must be filed by one-year deadline
  - All supporting documents will be due to the Asylum Office about three-four weeks after the application is filed.
  - Interviews can be rescheduled if necessary, but rescheduling is discouraged and can create lengthy delays in adjudication
- **Defensive (Immigration Court) Applications:**
  - Expedited hearing: all supporting documents due within two weeks – five months after filing
  - Non-expedited hearing: all supporting documents due about one-three years after filing.

# Preparing an Expert Affidavit for Filing

- Before filing, compare to client's affidavit and screen for inconsistencies and implausibilities
- REMEMBER: an adjudicator can make an adverse credibility determination based on anything in the record, even if it does not go to the heart of the asylum claim.

# Affidavit vs. Testimony

- In most cases, an affidavit is sufficient
  - Judge may give affidavit less weight
  - Unavailability for cross-examination goes to weight, not admissibility of affidavit
- Know your judge's preference
- Keep time in mind
- Consider making expert available telephonically

# Qualifying Your Expert in Court

- Review relevant background and education
- Specific expertise related to asylum cases (torture, PTSD etc.)
- Experience serving as an expert in other asylum cases
- Interaction with client and familiarity with client's story
- Connection to NIJC

# Using an Expert in Court

- Prepare your expert in advance
- Focus testimony (use time wisely)
- Foundational/leading objections common
- Be prepared for questions from the judge



# Attorney Resources

- NIJC's Asylum Manual and other materials related to experts and mental health/medical care for clients is available on NIJC's website: [www.immigrantjustice.org](http://www.immigrantjustice.org).
- Attorneys who register on the website also have access to NIJC's sample document bank, which includes sample expert affidavits

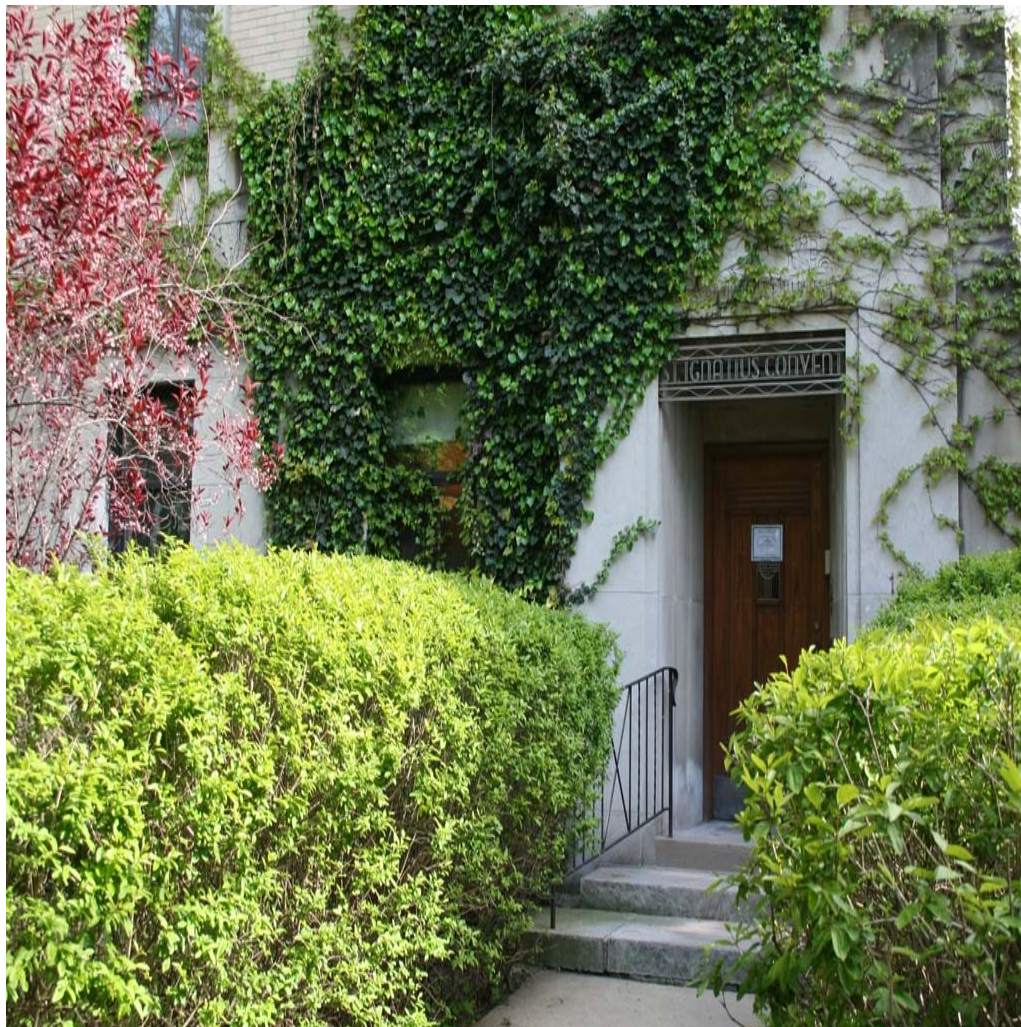


# **Introduction to the Kovler Center**

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Marianne Joyce, LCSW  
Heartland Alliance  
Marjorie Kovler Center

# About the Marjorie Kovler Center



*Marjorie Kovler Center transforms the lives of individuals recovering from the complex consequences of torture. Kovler Center provides medical, mental health, and social services; trains and educates locally and globally; and advocates for the end of torture worldwide.*

# Who We Are

- Program of Heartland Alliance for Human Needs & Human Rights
- Member of National Consortium of Torture Treatment Programs
- Member of International Rehabilitation Council for Torture Victims

# National Consortium of Torture Treatment Programs



Current membership includes 34 organizations in 15 states and the District of Columbia.

# IRCT

- Health-based umbrella organization located in Copenhagen, Denmark that supports the rehabilitation of torture victims and the prevention of torture worldwide.
- Members comprise more than 140 independent organizations in over 70 countries.
- Largest membership-based civil society organization to work in the field of torture rehabilitation and prevention.



# Marjorie Kovler Center

- Began in 1987
- Provides medical, mental health and social services to survivors of torture
- Provides training & consultation on the special needs and care of torture survivors
- Advocates on issues affecting torture survivor community (TVRA, anti-impunity, recovering political voice)
- Full-time staff of 6 (12 part time and contractual)
- Nearly 200 *pro bono* professionals

# Torture Survivorship in a Primary Care Population

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Disclaimer: We have not conflict of interest to report.



# Torture Identification – Why is this Important?

- Survivors of torture are known to suffer disproportionately from psychiatric disorders, especially PTSD.
- Survivors of torture will often times complain of somatic symptoms that might be more easily and more quickly understood if torture is known to have occurred.
- Increased physical problems - hearing, dental, contractures, pain, cosmetics, bowel, sexual, chemical dependency, violence, etc.
- Lowering the stress of the assimilation process.

# Burden of Care

- 5-10% of foreign-born individuals in large, urban HMOs have been tortured in foreign countries.
- *This estimate was done on more traditional cold war immigration patterns*
- ORR estimates over 500,000 survivors are now living in the US.
- 2003 – Latino Primary Care Patients in LA
  - 54% had experienced politically violence
  - 8% personally suffered torture
- Twice as likely to be Depressed
- Twice as likely to be suffering from PTSD
- 3% ever told doctor
- 0% ever were asked by doctor

Randall GR, Lutz EL. Serving Survivors of Torture: A Practical Manual for Health Professionals and Other Service Providers. Washington, D.C.: American Association for the Advancement of Science; 1991.

Eisenmann, D., Gelberg, L., Liu, H., Shapiro, M., Mental Health and Health –Related Quality of Life Among Latino Primary Care Patients Living in the United States with Previous Exposure to Political Violence, JAMA, August, 6, 2003, p 627-634.

# Burden of Care

- Amnesty International State of the World Report – 2011.
- In more than 98 countries some torture/maltreatment.

# RISK FACTORS FOR HAVING SUFFERED TORTURE

- “Flash point” country – that is FYR, Somalia, Iraq, Chechnya, Liberia, etc.
- Refugee or political asylee status
- Immigrant from country with totalitarian history
- Member of minority group in country of origin
- Member of minority political party in country of origin
- Civil war in country of origin
- Residence in refugee camp
- Military government in country of origin
- Prisoner of War
- Multiple family members deceased due to trauma
- History of arrest or detention
- Leadership in an antigovernment organization or relative of same

Adapted from: Weinstein, H., Dansky, L., Iacopino, V., Torture and War trauma Survivors in Primary Care Practice, West J Med 1996; 165: (112-118).



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Contents lists available at [ScienceDirect](#)

Forensic Science International

journal homepage: [www.elsevier.com/locate/forsciint](http://www.elsevier.com/locate/forsciint)

## Case report

## The epidemiology of torture: A case series of 58 survivors of torture

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## ABSTRACT

*Introduction/context:* Torture is widely practiced throughout the world and, yet, the ways by which torture is perpetrated, its regional similarities and differences, is not well understood. Our goal for this cases series was to elucidate the methods of torture practiced within different countries to both add to and expand upon previous research. This knowledge is important since it can buttress efforts to assist with torture survivors' recovery—medically, psychologically, and legally.

*Methods:* Fifty-eight survivors of torture who presented to a single interviewer over a 15-year period (1990–2005) for purposes of assisting with their claim for political asylum in the U.S. were enrolled into the study. The survivors' legal affidavits were examined and both quantitative and qualitative data were extracted for analysis. This data included the following: (1) duration, condition, and frequency of imprisonment, (2) abductors' affiliation and dress, (3) torture type, method, and frequency (both physical and mental), and (4) qualitative description of above items.

*Results:* Twenty-three countries were represented in the sample covering six major world regions. Women appear to be at greater risk for sexual torture than men. Sub-Saharan Africans tend to have more abuse compared to other world regions. Furthermore, the length of confinement also appears to trend towards longer duration in those survivors from Sub-Saharan African countries. Certain types of torture

# Conclusions from Research

- Women appear to be at greater risk for sexual torture than men.
- Sub-Saharan Africans tend to have more abuse and longer detentions compared to other world regions.
- Certain types of torture were almost universal
  - threats of death and beatings,
    - with hitting/kicking and beating with a stick/baton being the most common.
- There was no correlation between types of torturous acts and religion.

# The Examination

- How to take the history, the setting, the use of translators, the time allowances, locus of control, etc., have all been discussed.
- The mainstay of the forensic exam will be documenting any lasting marks that the torture might have left.

# The Examination

- The patient can guide the clinician to scars and marks that are not immediately evident. We look closely for scars in areas outside of the patient's field of vision. The back, scalp, buttocks, perineum, and soles of the feet are all commonly abused during torture.



# Laboratory Investigation

- X-rays, sonograms, psychometric testing, hearing examinations, and vision examinations
- However, keep in mind that a normal or “negative” result on any given test does not negate the patient’s claims of being tortured.
- Extra costs

# The Expert Opinion

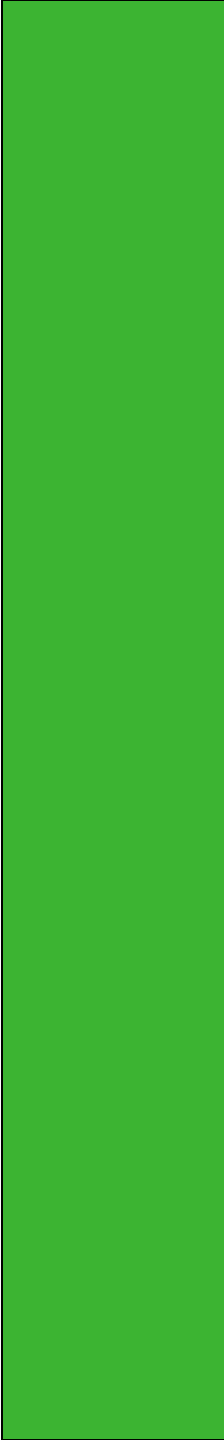
- *Not Consistent* with
- *Consistent* with
- *Very Consistent* with
- *Typical* of
- *Diagnostic* of

# Working with Lawyers

- Pre-examination sharing of information (*crucial*).
- Reconciling the affidavit for congruency.
- Timing of the filing.
- Sharing of original documents.
- Archiving for appeal and postponements.

# Conclusions

- A forensic examination may be life-saving in the case of asylum petitioning.
- Good access to primary care and culturally competent physicians will probably lead to improved care at less cost.
- J. Preston, Big Disparities in Judging of Asylum Cases. The New York Times. May 31, 2007, front page.
- J. Ramji-Nogales, A. Schoenholtz and P. G. Schrag, Refugee Roulette: Disparities in Asylum Adjudication. 60 Stan L. Rev. 295 (2008).



# The Psychological Consequences of Torture

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Marianne Joyce, LCSW  
Heartland Alliance  
Marjorie Kovler Center

# Who are Survivors of Torture?

- Doctors, attorneys, judges, teachers, nuns
- Supporters of an opposition candidate
- Student activists
- Labor union activists
- Randomly targeted individuals

# Why are they Tortured?

- Affiliation with political opposition
- Attempting to improve the existing social conditions
- Documenting and reporting corruption, human rights violations
- Divergence from cultural norms
- Religious, ethnic, national, and/or social affiliation

# What are the Consequences?

- Mental health problems (depression, anxiety, PTSD)
- Physical and health problems
- Uncertain immigration status
- Restricted access to specialized services
- Poverty
- Homelessness
- Joblessness
- Isolation
- Separation from family and community



# Core Vulnerability

- Power & control
- Fear & uncertainty
- Lack of trust & safety\*
- Normal human response to abnormal human experiences

# Interview Dynamics

- Inherent power dynamic
  - Attorney as authority figure
  - Can be associated with immigration system and deportation
- Survivor vulnerability
  - Impaired by trauma;
  - no knowledge of legal system;
  - poor physical & emotional health;
  - often dire social conditions
  -

# Barriers to Disclosure

## ➤ **Shame and humiliation**

- Details of torture
- May minimize
- May omit

## ➤ **Anxiety / Retraumatization of interview**

- Anxiety can feel like stress of trauma

# Bridging Barriers

- Interrogations often part of torture
- Our meetings with survivors may remind them of these frightening experiences
- We can modify our behavior and structure of meetings to disrupt negative assumptions

# Trust-building Strategies

## ➤ Personal warmth

- Survivors reassured by human connection

## ➤ Transparency

- Preview meeting
  - Purpose (what you hope to accomplish)
  - Length (how long do you expect to work)
  - Flexibility
- Small choices, when possible
  - Allow choice of where to sit
  - Can request break? End early if necessary?
  - Can postpone answering question until next meeting?
  -

# Communication

## ➤ Clarity & repetition needed

- Emotional constriction;
- Diminished attention and concentration;
- Memory difficulties

## ➤ Interpreters

- Considerations of politics, gender, class
- Need to interpret everything, including content that might be embarrassing, shameful
- Emotional reaction, especially if from same country

# Additional Tips

- Allow time for trust to develop
- Acknowledge their current difficulties
- Provide concrete explanations
- Set tone for comfort asking questions

# Signs and Symptoms

- Poor concentration
- Memory problems
- Nightmares
- Insomnia
- Anxiety
- Depression
- Suicidality (worsened by fear of deportation)
- Startle response
- Fear of unexpected touch
- Inability to trust others



# Signs and Symptoms

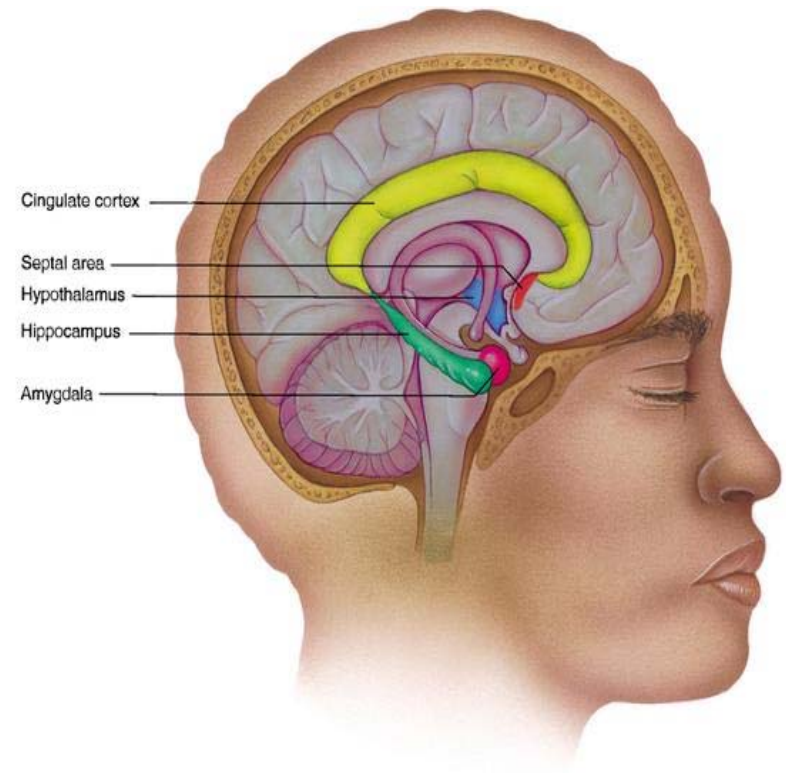
- Not wanting to associate with people from same country
- Fearful of officials, police, uniformed guards
- Numbness of all emotion
- Flooding of painful emotions
- Alienation in interpersonal relationships
- Anger, Irritability
- Intense sense of loss
- Women who have been raped may fear men
- Substance abuse
- Occasional psychosis

# Options during Trauma

- **Fight**
- **Flight**
- **Freeze**

# Survival by Limbic System

- Amygdala
- Hippocampus



# Memory Storage – *the higher the emotional charge, more likely to be stored*

## ➤ **Hippocampus**

- Cognitive
- Facts
- Language-based
- Historical placement

## ➤ **Amygdala**

- Emotional
- Body
- Sensory
- Learned procedures (e.g. riding a bike)
-

# Memory Problems – Why?

## ➤ **Amygdala**

- Activated during trauma and re-trauma

## ➤ **Hippocampus**

- Suppressed during traumatic threat

# Post Traumatic Stress Disorder

- PTSD is this biological alarm system remaining “on” even after conditions have improved
  
- Adaptive

# Re-experiencing the Trauma

- Triggers – sensory reminders
- Flashbacks
- Intrusive thoughts and memories
- Nightmares with content of the trauma

# Avoidance

- Avoidance of thoughts, conversations, activities, places, or people
- Emotional constriction
- Social withdrawal
- Personal detachment
- Inability to recall details of the trauma



# Hyperarousal

- Difficulty falling asleep and staying asleep
- Irritability or increased anger
- Difficulty concentrating
- Hypervigilance
- Startle response
- Generalized anxiety
- Gastrointestinal distress

# Depression

- Loss of pleasure
- Loss of appetite
- Trouble sleeping
- Slow, heavy movement
- Chronic fatigue
- Feeling worthless
- Diminished attention, concentration, and memory
- Thoughts of death and dying, suicidal ideation



# Altered Self-Concept

- Personality change
- Feelings of being damaged, contaminated
- Difficulty imagining a future
- Existential challenges

# Resilience

- The process of adapting well in the face of adversity, trauma, tragedy, threats, or significant stress



# Services for Survivors of Torture

## **New Clients Receive:**

- Screening Assessment
- Comprehensive Mental Health Intake Assessment
- Physical Examination
- Individual Treatment Plan

## **Mental Health Services:**

- Psychotherapy
- Counseling
- Psychiatric Treatment
- Forensic Assessment
- Testimony in Court
- Art Therapy
- Group Therapy
- Crisis Services
- Community-building
-

# Services

## **Medical & Rehabilitative:**

- Primary Care
- Specialized Care
- Dental
- Vision
- Forensic Evaluation
- Occupational Therapy
- Physical Therapy
- Alternative Therapies

## **Case Management:**

- Employment
- ESL Classes
- Shelter referrals
- Emergency Support
- Interpreting & Translation
- Legal Referral
- Special Events
- Activity Groups
- Limited CTA passes

# Treatment Model

- *Empowerment model* of care
  - centered on the survivor's identified needs
- *Integrated* medical, mental health and social services are coordinated by staff
- Medical & psychological forensic exams support asylum claims
- Services provided on-site and in *community* by staff and/or volunteers
- Treatment modified to be *culturally sensitive* to each survivor
- Focus on *safety, dignity, respect, choice*
- Services provided at no cost to the client

# Survivors Served Annually (2012)

- 327 individuals (63 new)
- 60 countries
- 87% were primary survivors,  
13% were family members
- 54% were men and 46%  
women
- 82% were between 21-50  
years old
- 61% were from Eastern,  
Central or Western Africa



# Advocacy

- Torture Victims Relief Act
- Refugee Protection Act
- Work authorization, one year filing deadline, and immigration detention
- Illinois Coalition Against Torture
- Support for survivors in finding “political voice”

# Collaborative Partners

- HA National Immigrant Justice Center
- HHCS Refugee and Immigrant Community Services and other resettlement agencies
- Heartland Health Centers
- John H. Stroger, Jr. Hospital of Cook County
- Northwestern University Feinberg School of Medicine
- University of Illinois Office of Applied Psychology
- 100 organizations

# THANK YOU!

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If you are an attorney representing an NIJC client in need of medical or mental health care, please contact NIJC Pro Bono Coordinator, **Michelle Bezner**, at 312.660.1307 or [mbezner@heartlandalliance.org](mailto:mbezner@heartlandalliance.org) for a referral to the Kovler Center and for other information and resources.